IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2010

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

C.R.P PD.No.1648/2004

P.Ashokan ... Petitioner / 2nd Plaintiff

vs.

1.K. Ramachandran
2.V.T.Palani chetty ... Respondents / 1st Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreeal order in R.E.P.No.54 / 2003 in O.S.No.1259/1979 on the file of the District Munsif, Krishnagiri dated 08.03.2004.

For Petitioner : Mr.V.Lakshminarayanan
For Respondents : No appearance.

O R D E R

The petitioner is second plaintiff in O.S.No.1259 of 1979 which was filed against the first respondent. The second respondent was the first plaintiff in the suit. A decree was passed in favour of this petitioner directing the first respondent to remove illegal construction and to hand over possession of the suit property. The first respondent preferred an appeal before the Sub Court, Krishnagiri in A.S.No.47 of 1990 and the same suffered dismissal on 11.02.1999 against which he preferred Second Appeal before the High Court in S.A.No.647 of 1991 which also was dismissed. In this context, the petitioner filed REP No.54 of 2003 on the file of the District Munsif Court, Krishnagiri arraigning both these respondents as respondents seeking to execute the decree.

2. He has alleged that after the disposal of the Second Appeal by the High Court, a partition was effected in the family in which the suit properties and other properties were allotted to his share. The second respondent filed suit in O.S.No.32 of 2001 and the same is pending. The petitioner has also filed a suit in O.S.No.61 of 2000 for declaration and injunction. In view of the pendency of the said suit, the second respondent does not co-operate with him to execute the decree. Therefore, the present execution petition has been filed. As per order 21 Rule 15 CPC, one among the decree holder is entitled file an execution petition. No prejudice would be caused to the second respondent in executing the decree. No claim is made against him. The second respondent is impleaded for proper adjudication since he is a party in the suit. Therefore, notice may be issued to the respondents and execution may be ordered.

3. In the counter filed by the first respondent adopted by the second respondent, it is mentioned that the second respondent is also one among the decree holders. The petitioner has suppressed the true facts to grab the suit property. In O.S.No.1259 of 1979, one of the decree holders, namely this second respondent, after disposal of the Second Appeal has received a sum of Rs.15,000/- from the first respondent in the Panchayat held in the village relinquishing his right and his son's right over

the suit property and affirmed that he would not approach the Court. He also assured that no Court proceedings would be vitiated. Hence, the petition may be dismissed.

4. The learned District Munsif, Krishnagiri has dismissed the application by observing that the oral partition as pleaded by the petitioner in his family stands unproved and the decree could not be executed till the rival claims between the decree holders are settled and the succeeded party is at liberty to prefer execution proceedings. This is the order challenged before this Court by the first plaintiff.

5. The learned counsel for the petitioner Mr.V.Lakshminarayanan would submit that there is no valid ground in the order challenged before this Court for dismissing the execution petition, that once it is pleaded that the decree was not satisfied by the judgment debtors in full, then the Court has to order for the execution of the decree as it stands and that the order impugned is not at all sustainable in the eye of law.

6. In support of his contention, he placed much reliance upon the decision of this Court reported in AIR 1985 MADRAS 310 [Palaniammal and others v. Pavayammal and others], wherein the learned Judge has referred and followed a decision of the Full Bench of this Court in which it has been held that the terminology in Order 21 Rule 1 Cl.(b) "decree-holder" would mean in plural as "decree holders" and the payment out of Court for satisfaction of the decree has to be made to all the decree holders and one of the several joint decree-holders cannot give a valid discharge of the entire decree. The operative portion of the Full Bench decision goes thus -

The question came up before the Full Bench of this Court in Hanumanthappa v. Seethayya and Company, 62 Mad LW 539 : (AIR) 1949 Mad 790) as to whether the expression "decree holder" used in singular would include the plural also. Viswanatha Sastri, J., in a separate judgment to form the majority view, has observed as follows :

"Order 21, R.1 directs that all money payable under a decree shall be paid as follows :

(a) into the Court whose duty it is to execute the decree;

(b) out of Court to the decree-holder or

) otherwise as the Court which made the decree directs.

By virtue of S.13, Cl.(2), General Clauses Act, words in the singular shall include the plural. Therefore, the term "decree holder in O.21, R.1, Cl.(b) means "decree-holders" if there are two or more of them. Similarly in O.21, R.2 Cl.(1), which speaks of a payment out of Court or adjustment to the satisfaction of the decree-holder, the expression "decree-holder" means "decree-holders" if there are two or more of them. It may readily be granted that where a joint decree is passed in favour of two or more persons, nor related as partners, a payment out of Court, in order to be binding on all, must be made to all the joint decree-holders and that one of several joint decree-holders cannot give a valid discharge of the entire decree without the concurrence of the others....."

7. He also garnered support from a Division Bench decision of Bombay High Court reported in AIR 1953 Bom 137 [Valchand Gulabchand Shah Vs. Manekbai Hirachand Shar and Anr.] in which the Bench has observed as follows -

If the shares of the decree-holders are apparent on the face of the decree either expressly or by

necessary implication, it is not a joint decree. In such a case each decree-holder can take out execution in respect of his own share. But where the shares of the respective decree-holders are not apparent on the face of the decree, either expressly or by necessary implication, the decree which is sought to be executed is a joint decree, and the judgment-debtors. Where one of the decree-holders is authorised to receive payment on behalf of all, the payment to him is payment to the whole body of the decree-holders. But save in such cases satisfaction must be rendered to the whole body of the judgment-creditors.

8. He also cited a judgment of Allahabad High Court reported in AIR 1995 ALLAHABAD 21 [Smt.Lalita Devi v. Smt.Kamla Devi] in which it is observed that the law appears to be settled, that in case of a joint decree where the shares of the parties are distinct or separable even though some of the decree holders have transferred their shares to the judgment-debtor, the decree does not become inexecutable as a whole but can be executed by one of the decree-holders. However, in the present case at hand, it is noteworthy that in the decree the share of the plaintiff have not been specified and it is a joint decree passed in favour of the decree holders. Such a decree, in my opinion, can be executed as a whole by one of the decree-holders under the provisions of Order 21, Rule 15, CPC. The Allahabad High Court has followed a Full Bench decision of this Court in ILR 25 MADRAS 431 (FB) [Peria Sami v. Krishna Ayyan], in which Full Bench has held that a joint decree may no doubt some times becomes divisible and executable in part to the extent of such severance by operation of law or by act of parties, the judgment debtor has acquired the interest of one or some of the decree holders in the decree and thus, a partial satisfaction or extinguishment of a decree takes place.

9. Order 21 Rule 15 (1) (2) of CPC reads thus -

15. Application for execution by joint decree-holder:- (1) where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not jointed in the application.

The above said provision enables one among the decree-holders, in a joint decree consists of several decree-holders, to levy execution proceedings for execution of the decree for benefit of all. As far as the facts in the present case are concerned, it is the version of the petitioner that the second respondent, the other decree holder does not co-operate with him for execution of the decree. In such circumstances, it is to be decided whether in the prevailing circumstances he can seek for execution of the decree.

10. From the above said decisions, the following points originate -

[1] The term employed in Order 21 Rule 1 (b) of CPC would convey the meaning as "decree-holders" also. In satisfaction of a decree, the payment out of court shall be made by the judgment debtor to all the decree-holders and one among the several decree-holders in a joint decree is not competent to discharge the entire decree without authorisation of other decree-holders.

[2] If payment out of Court is made by the judgment debtor to one among the decree holders in a joint decree, the judgment debtor has to be establish that it was paid to the whole body of the decree

holders.

[3] A joint decree could be made divisible and executable, to the extent of the intending judgment creditor who prefers execution petition, by act of parties. In such circumstances, a partial satisfaction or extinguishment of a decree may take place.

[4] When a joint decree provides for distinct and separable shares to each of the judgment creditors, then even if certain properties in the decree were alienated, the judgment creditor is always at liberty to execute the decree against the judgment debtor.

11. In the backdrop of the above said prepositions laid down by this Court and various other High Courts, I am of the considered opinion that a partial satisfaction of the decree can be made by a judgment debtor. In the present case on hand, it is implidely admitted in the counter that without concurrence or other decree-holder the relinquishment by second respondent took place. There is no document to show that such a transaction took place between both the respondents as to the receipt of Rs.15,000/- by the second respondent from first respondent. Even though such relinquishment had taken place, it would not bind the petitioner since he was not put on notice nor had he authorised the second respondent to enter into such a transaction. The second respondent had adopted the counter filed by the first respondent but both of them have woefully failed to establish before the executing Court that the relinquishment took place in the presence of Panchayatars and the same would bind upon the petitioner. In the absence of such evidence, it has to be necessarily held that there is no relinquishment of right over the property by the second respondent.

12.There is no mention in the affidavit that the first respondent is also a party to the suit in O.S.No.32 of 2001 and O.S.No.61 of 2000. It is stated before this Court that both the suits are pending. The nature of disposal of the suit has not been addressed before this Court. In such circumstances, there could be no impediment for the decree passed in O.S.No.1259 of 1979 to be executed to the extent of the right of the petitioner in the property. It is incumbent upon him to establish before the executing court that in family partition, the property covered by the execution petition was allotted to his share. On establishing such fact, the executing court can direct the decree to be executed. For this purpose, the case has to be remitted to the executing court. Hence, the order challenged before this court has necessarily to be interfered with, which is set aside.

13. In the result, the Civil Revision Petition is allowed setting aside the order passed in R.E.P.No.54 of 2003 in O.S.No.1259 of 1979. The matter is remanded back to the executing court namely the District Munsif Court, Krishnagiri for fresh disposal in the light of the observations contained in this order. No costs. The learned District Munsif, Krishnagiri shall hear both the parties and afford ample opportunities to them to establish their respective contentions by production of evidence either oral or documentary, if any.

16.11.2010
Internet : Yes/No
Index : Yes/No
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To

The District Munsif,
Krishnagiri

S.PALANIVELU, J.

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Order in
C.R.P PD.No.1648/2004

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